Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Telephone Consumer Protection Act of 1991	)	CC Docket No. 92-90
	)	
	)	

TO: The Commission

REPLY COMMENTS OF GANNETT CO., INC.

Gannett Co., Inc. ("Gannett"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding to implement the Telephone Consumer Protection Act of 1991 ("TCPA"). Gannett is the largest U.S. newspaper group, with over 80 daily newspapers, including USA TODAY, more than 50 non-daily publications, and USA WEEKEND, a weekly newspaper magazine.

The majority of commenters in this proceeding agree that the Commission must strike a balance between the privacy concerns which the TCPA seeks to protect and the continued viability of beneficial and useful services. In discussing the best means to accomplish this task, many commenters (including Gannett) have delineated the legitimate purposes that telemarketing calls serve. In particular, Gannett and other newspaper publishers have amply demonstrated that they rely heavily on telemarketing to reach current, former, and new customers for a variety of purposes, including

subscription sales and debt collection. Moreover, these commenters have offered concrete evidence that consumers benefit by receiving telemarketing calls from newspapers. Gannett believes, therefore, that the record amply establishes that newspaper telemarketing serves the public interest -- newspapers are an invaluable source of information, rooted in the community and responsive to community standards. To limit newspapers' ability to conduct legitimate telemarketing practices would unduly and unnecessarily constrain their ability to serve the public.

A. Company-Specific "Do Not Call" Lists Are a More Feasible, Effective and Cost Efficient Means than National Databases to Deter Unwanted Calls

Given the fact that the TCPA recognizes that legitimate telemarketing practices should be preserved, and that the TCPA charges the Commission with balancing the viability of these practices with privacy concerns, the minority of commenters who contend that the Commission's Notice of Proposed Rulemaking violates Congressional intent as well as the spirit of the TCPA are plainly mistaken. As is clear from its legislative history, the TCPA gives the FCC the flexibility to design different rules for those types of telemarketing calls that it finds are not an invasion of privacy. As part of its current decisionmaking process, the Commission should consider not only the privacy interests of consumers but also the public interest benefits of legitimate

telemarketing practices. The Commission's NPRM reflects a correct understanding that it must seek to achieve a balance. Conversely, the consumer advocates commenting in this proceeding, notably Consumer Action and the National Consumers League, ignore the latter part of the equation.

Adoption of a national database, as advocated by Consumer Action and the National Consumers League, in whatever form, presumes that telephone subscribers must have a method to shun all telephone solicitations. However, Gannett wishes to emphasize, and Congress has explicitly recognized, that various types of telemarketing calls raise different levels of concern. Telemarketing calls from newspapers are a primary example of a beneficial service, rooted in the local community, that need not be materially curtailed by the TCPA. Establishment of a national database would unnecessarily deprive consumers of the choice to receive such calls, and thus strip them of convenient access to useful information.

As Gannett and other commenters have shown, in the case of newspapers, telephone solicitations serve a valuable purpose, both for publishers and consumers, and newspapers have established practices that successfully respect customer privacy. It is the experience of most newspapers that consumers who generally might prefer not to receive indiscriminate telemarketing calls usually do in fact appreciate calls from newspapers. See Comments of American Newspaper Publishers Association ("ANPA") at 5. As

demonstrated in the comments filed in this proceeding by ANPA, Gannett, and a variety of publishers, only a small percentage of newspaper telemarketing calls result in do not call requests. Adoption of a national database would tend to remove consumers from all lists, even those on which they might otherwise choose to be included.

Moreover, the costs of creating and maintaining a national database must be weighed against the actual benefits to be derived. Consumer Action proposes a National Telemarketing Center, which would purge from telemarketers' lists those names found in a national database. According to Consumer Action, telemarketers would bear the costs. This proposal is flawed, however. Such a list, or any national database, for that matter, would be difficult to administer, especially given the transient nature of our population. It would also be inconvenient for consumers to notify the Center in every instance where an address or telephone number changed. Most important, Consumer Action ignores the fact that the increased costs borne by telemarketers to implement and comply with this system would eventually be passed on to consumers.

The "post office list" proposed by National Consumers League might raise other privacy concerns. As ANPA notes in its Comments, the Subcommittee on Government Information, Justice and Agriculture of the House of Representatives' Committee on Government Operations recently held a hearing to explore the privacy ramifications of

national data bases compiled from, among other sources, a national Postal Service database. See ANPA Comments at 9. The Post Office currently provides change of address lists to direct mail firms and might do so with any database list it compiles. Consumers could find themselves trading unwanted telephone calls for unwanted junk mail.

Commenters from various state agencies have offered their own telemarketing and/or autodialer regulations as an example for the FCC to follow. In evaluating the merits of adopting such a system, the Commission should recognize that the costs of establishing and maintaining a national database would undoubtedly be far greater than on the state level.

The use of company-based do not call lists, as opposed to a national database, would prove less costly and would more accurately reflect consumer preferences. Thus, they are a far more attractive alternative, from both consumer and telemarketing perspectives. In addition to eliminating the excessive costs and administrative problems inherent in administering a national database, a system utilizing company-based do not call lists would enable consumers to receive calls from some services and not others, according to their wishes.

B. Alternatively, the Commission Should Consider Separate Procedures for Local Telephone Solicitations by Small Businesses and Holders of Second-Class Mail Permits

Congress has also directed the Commission to consider whether different procedures should apply to local telephone solicitations by small businesses or by holders of second-class mail permits. Congress has acknowledged that local solicitations may not give rise to the privacy problems underlying the TCPA, reasoning that these businesses are "part of the community, and are subject to the scrutiny of the community, and must live by their reputation in the community . . . ." Remarks of Sen. Gore, 137 Cong. Rec. S16204 (Nov. 7, 1991). It should also be noted that telemarketing restrictions in many states exempt newspapers in whole or in part.

Therefore, if the Commission should decide to adopt a national database (or another more restrictive alternative), it should also consider whether to adopt a different method of preventing unwanted calls for newspapers. Specifically, as demonstrated above, the Commission should allow newspapers to use a company-specific do not call list.

Again, as Congress has recognized, newspapers have a particularly strong business incentive to be sensitive to community privacy standards when conducting telephone solicitations. They are exceedingly well known in their areas, and have substantial local ties. Moreover, newspapers are often subject to local better business or similar

community standards. Therefore, newspapers should be permitted to utilize company-specific do not call lists, as they have in the past, to effectively protect consumer privacy interests.

Finally, regardless of whether the Commission chooses to adopt a company-specific or national database, it should be noted that Congress expressly recognized that after a change in a person's telephone number, a telephone subscriber should reasonably expect to receive telemarketing calls during the first six to twelve months. Congress also recognized that these calls offer a sizeable benefit, as "[t]his initial contact during that period may actually help introduce new residents to local goods and services available in their new community." Remarks of Rep. Rinaldo, 137 Cong. Rec. H11311 (Nov. 26, 1991).

C. Debt Collection Calls Clearly Fall Within the Established Business Relationship Exemption

A minority of commenters have challenged the Commission's conclusion that debt collection calls fall within the "business relationship" exemption, and argue that there should be no exemption for debt collectors. In support of this position, Consumer Action states that "a debtor who has failed to pay a debt is, in most cases, a person who no longer wishes to have a relationship with the creditor." Consumer Action Comments at 8. While that may be true on a superficial level, the decision to sever the contractual

relationship is not one that the debtor in arrears can make unilaterally. Debt collection calls, by definition, presuppose a prior "established customer relationship." Indeed, Gannett and a majority of commenters in this proceeding have demonstrated how essential this low-cost method of collection is to their continued business practices. In addition, the legislative history of the TCPA demonstrates that Congress did not intend to prohibit the use of automatic dialers with prerecorded messages for use in debt collection. See Remarks of Sen. Hollings, 137 Cong. Rec. S16206 (Nov. 7, 1991). The Commission is, therefore, correct in its assessment that debt collection calls do not implicate the privacy interests protected by the Act.

Consumer Action and National Consumers League also assert that the use of auto dialers for debt collection calls may violate the Fair Debt Collection Practices Act. As the Commission has recognized, that question is best addressed by the Federal Trade Commission. In any event, debt collectors should be able to draft identification messages that comply with both statutes.

CONCLUSION

Gannett recognizes the important purposes that the TCPA serves by protecting individuals from telemarketing which is an intrusive invasion of privacy. However, that purpose must be weighed against the public interest benefits which legitimate telemarketing practices provide. Gannett

urges the Commission not to adopt a national database in any form; such a database is unnecessary, costly, and difficult to administer. In addition, rules adopted to implement the TCPA should exempt debt collection calls from liability.

Respectfully submitted,

GANNETT CO., INC.

By: Peter D. O'Connell KAK
Peter D. O'Connell

By: Kathleen A. Kirby
Kathleen A. Kirby

Its Attorneys

REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-8647

Dated: June 25, 1992